

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JUL 30 2002

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHER TURNER
and
BARRETT COMISKEY

Application No. 08/820,057

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TECHNOLOGY CENTER 2600

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

Before STONER, Chief Administrative Patent Judge; HARKCOM,
Vice Chief Administrative Patent Judge; and WILLIAM F. SMITH,
Administrative Patent Judge.

Per curiam.

This application was received at the Board of Patent Appeals and Interferences on July 18, 2002. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

A. Findings of Fact:

On September 14, 2001, appellants filed a Notice of Appeal (Paper No. 31) and on November 14, 2001, appellants filed an Appeal Brief (Paper No. 32). On December 18, 2001, the examiner

mailed an Examiner's Answer (Paper No. 33). On February 14, 2002, appellants filed a Reply Brief (Paper No. 35). On May 28, 2002, the examiner mailed a paper entitled "Response to Reply Brief" (Paper No. 36) in response to appellants' Reply Brief.

On December 1, 1997, the rule pertaining to the Examiner's Answer and Reply Brief, 37 CFR § 1.193, was amended to read as follows:

§ 1.193 Examiner's answer and reply brief.

. . . .

(b) (1) Appellant may file a reply brief to an examiner's answer within two months from the date of such examiner's answer. . . .

The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief. A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.

(2) Where prosecution is reopened by the primary examiner after an appeal or reply brief has been filed, appellant must exercise one of the following two options to avoid abandonment of the application:

(i) File a reply under § 1.111, if the Office action is not final, or a reply under § 1.113, if the Office action is final; or

(ii) Request reinstatement of the appeal. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (§§ 1.130, 1.131 or 1.132) or other evidence are permitted.

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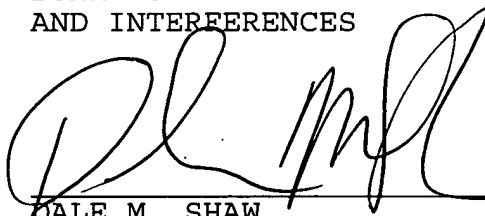
B. Conclusion

In view of the changes to 37 CFR § 1.193(b)(1), the entry of the Response to Reply Brief mailed May 28, 2002 (Paper No. 36), is inappropriate, since it includes additional argument. Accordingly, this paper should be vacated.

The Board must be informed promptly of any action affecting the appeal in this case, including reopening of prosecution, allowance and/or abandonment of the application.

BOARD OF PATENT APPEALS
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